IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3271 OF 2002

Parakhe Gajanan Maruti.... ... Petitioner.

Versus

The Chief Officer, Nagarparishad,
Talegaon Dabhade... .... Respondent.

Mr. A. D. Patwardhan for the Petitioner.

Mr. S.B.Deshmukh with Mr. A.V.Anturkar
for the Respondent.

**CORAM : V.G. PALSHIKAR, and
V.R.KINGAONKAR, JJ.**

DATED : 28TH FEBRUARY, 2006.

P.C.:

By this writ petition, the Petitioner has assailed the action of the Respondent - Municipality in deducting from his pension certain monies which according to the Municipality were wrongly paid to the Petitioner. The deduction was effected in the year 1977. The Petitioner thereafter made a representation pointing out why the deduction was wrong and then in the year 2002 filed the present petition.

2. Reply to the writ petition is filed by the Municipality and it is contended that the Petitioner can not claim in a writ petition something which he could not get even on filing a civil suit. The deductions were effected in the year 1977. Suit for money due was, therefore, liable to be filed within three years. No suit was filed but a representation was made and even after a representation for two years the Petitioner has waited for reply. Contention is that the discretionary jurisdiction under Article 226 of the Constitution should not be exercised in favour of a person who with diligence could have filed a suit and recovered money but has failed to do so.

3. However, on behalf of the Petitioner, it was contended that the principles of natural justice were violated by effecting the deductions without giving any opportunity to the Petitioner to show cause. This is required as implementation of principles of natural justice so that the Petitioner is not taken by surprise. Effectually, the Petitioner has made a representation pointing out in detail how the deductions need not be made. Even in the petition there is no averments that there is any violation of the principles of natural justice. In such

circumstances, in our opinion, it would be proper to refuse exercise of discretionary jurisdiction in favour of such Petitioner. Hence Petition is dismissed.

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